IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No 7083 of 2006

Shri Harshadbhai Kishorchandra
and others ..Petitioners

vs.

Smt.Yashoda Jagannath Kalal
and others ..Respondents

Shri S.H.Joshi for petitioners.

Shri M.M.Sathye for respondent nos. 8 to 15 and 17.

CORAM: S.C.DHARMADHIARI J.
11th December, 2007

P.C.

1. The matter arises out of framing of an issue by the IIIrd Joint Civil Judge, Jr.Dn., Nashik on 30th June, 2006 in Reg.civil suit being Reg.Civil Suit no.597 of 1998.

2. According to the parties that issue which the Civil Court has framed with regard to validity of the sale deed needs to be framed in the matter and with the wording that is being used by the Trial Court. However, the difference of opinion arose out of the fact as to whether the said issue after being framed can straightway be referred to the Mamlatdar exercising power under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948.

3. Both sides do not dispute that what goes to the root of the matter is the issue as to whether the present petitioners are agriculturists or not. Both sides do not dispute that such an issue upon being framed cannot be determined and decided by the Civil Court. In the very nature of things, it must be referred to the authorities under the Tenancy Act. Accordingly following order is passed.

. The additional issue that will be framed now is as under;

. Whether the plaintiffs in Reg.Civil Suit No.597 of 1998 are agriculturists or not?

. Whether sale deed executed by Late Jagannath Kalal and defendant nos.5 to 7 in favour of plaintiffs dated 16.2.1984 is invalid for the breach of Section 63 of B.T.and A.L.Act?

The issues that are framed by the Trial Court in the suit are also retained. However, it is directed that the issue as to whether the plaintiffs are agriculturists or not will have to be answered by the authorities under the

Tenancy Act and, therefore, the said issue is accordingly referred to the Mamlatdar of the concerned area for his decision. He shall give opportunity to the parties to place such material as is permissible in law and decide the issue as expeditiously as possible and in any event within a period of four months from the date he receives all the papers.

4. The issue as framed by the Trial Court with regard to the validity of the sale deed reproduced above need not be referred to the Mamlatdar at this stage in as much as the issue would be continued to be retained on record of the civil court and depending upon the finding of the Mamlatdar on the issue referred to him by this order, the Civil Court to proceed and decide the other issues with regard to the validity of the sale deed in accordance with law. All contentions of both sides are expressly kept open. The impugned order stands modified and substituted in the above terms. Petition is disposed of. No order as to costs.

(S.C.DHARMADHIKARI J.)